

**Exhibit 5.3: Petitioners' Email to FRA on Unlawful Withholding and Intent to File Court Case**

Subject: Re: FRA File Nos. FOIA 10-212 and 10-226: Status of Processing and Providing Responsive Records to Skybridge's Two FOIA Requests  
Date: Friday, November 5, 2010 1:41 PM  
From: Warren Havens <warren.havens@sbcglobal.net>  
To: <betty.watson@dot.gov>, <Denise.Kollehlon@dot.gov>, <Stephen.Gordon@dot.gov>, <FTA.FOIA@dot.gov>  
Cc: Jimmy <jstobaugh@telesaurus.com>, Mark Griffith <mgriffith@telesaurus.com>  
Conversation: FRA File Nos. FOIA 10-212 and 10-226: Status of Processing and Providing Responsive Records to Skybridge's Two FOIA Requests

US Department of Transportation, Federal Railroad Administration:  
Betty Watson, and  
Office of Chief Counsel: Denise Kollehlon FOIA Specialist (202-493-6039), and Stephen Gordon (202 493 6001): see <http://www.fra.dot.gov/Pages/1292.shtml> .

Ms. Watson,

I called to speak with Ms. Kollehlion and Mr. Gordon today and left them voice mails summarizing the below. I was told by the Office of Chief Counsel that they are the appropriate attorneys to address regarding the below matters (Ms. Kollehlion dealing with FOIA matters, and Mr. Gordon dealing with PTC matters, I was told), in addition to yourself: as Administrative Staff Assistant, you have handled response to the subject FOIA requests to date, from what my office told me.

I am President of Skybridge Spectrum Foundation: the following adds to Mr. Stobaugh's email below, and to the degree shown, supersedes it: Mr. Stobaugh requests status, but my email explains we will no longer properly wait, but need to file a court case, etc.

We need the FOIA requested information (in our two requests) for an important docket, and related radio spectrum assignment application (herein together, the "docket") before the Federal Communications Commission.

We needed it some time ago for the most timely and effective use in that docket.

The documents are needed not only for Skybridge's own interests in the docket, but also the public interest issues involved (Skybridge, itself, operates only to promote and defend public interest wireless on a nonprofit basis).

The docket involves a US railroad agency, the Southern California Railroad Authority ("SCRRA"), positive train control (PTC) issues (asserted FRA requirements, plans, etc.), FCC radio spectrum for PTC, etc. The docket also involves a position by PTC 220 (owned by major US railroad freight companies) in support of SCRAA.

Since it is now very late, months past the FOIA statutory deadline to response, our request has been "denied" under FOIA law.

Since what we request is not subject to any FOIA disclosure exemptions (at least, not the majority of what was requested), the denial is unlawful.

For the above reasons, I have asked our legal counsel today to file a case, as soon as possible, in a US District Court against your agency for the unlawful denial, along with attorney fees and other relief.

If you decide to immediately release the requested documents, we will not file the case.

If you decide to do that, please send them by email if you have them in PDF format.

Otherwise, please send them by overnight mail.

In addition, the principal requested documents are ones that representatives of your agency directly told me in a phone call, right before we submitted the subject FOIA request, were in his office. Your agency could have located them within minutes. There is no justification for months of delay. FOIA law does not describe or permit any delays beyond the statutory response time in such case, nor allowance of delay on first come, first serve basis (where that is asserted to mean the agency could not yet get to a request).

I intend to file this email as an exhibit in a pleading before the FCC this coming week. That timing is caused by a filing by one of the US rail agencies your agency regulates-- the Southern California Railroad Authority (SCRRA)-- that is coordinating its position with your agency, the FRA, and seeking and obtaining FRA support to some degree (we doubt from the records we have seen that FRA understands the nature and substance of the FCC docket).

It is especially objectionable and contrary to the purpose of FOIA for your agency to spend time and effort to support the interests of your regulated entity, SCRAA, in this FCC docket, while in the same time period unlawfully denying the information Skybridge seeks under FOIA regarding SCRAA's position in that docket (dealing with its asserted need for PTC using 217-220 MHz spectrum it asserts is its sole option, etc.).

Skybridge opposes SCRAA's principal position before the FCC in this docket for reasons explained in detail in the FCC docket. We do not oppose PTC per se (at least not its goals: its implementation is another matter), nor aspects of SCRAA's PTC plans per se (what little it explains of them in the FCC docket)-- but, as some persons in your agency must know, and as reflected in SCRAA internal documents, the spectrum SCRAA seeks is subject to ongoing investigation by the FCC as to the validity of its licensing to a company called Maritime Communications/ Land Mobile LLC, and claims to said spectrum by other parties based on their high bids in the subject FCC spectrum auction: those entities are charitable donors to Skybridge, and they seek to donate to Skybridge additional spectrum if they prevail in the just noted claims. Skybridge also holds at this time FCC radio spectrum in the same class, and it acts to defend proper application of FCC law in radio spectrum licensing in certain classes of spectrum needed or useful for wireless systems for "smart" transportation, energy, environmental protection, and emergency response: See, e.g., our Scribd link below. The spectrum SCRAA seeks in the noted FCC docket is in this class.

The documents you are withholding include the SCRAA filings with your agency on the matters of the FCC docket: its plans and other filings regarding PTC and related matters, and other documents showing the nature and status of PTC in the US, etc.

In other words, your agency is taking sides in this FCC docket unlawfully, and that appears to be the reason for the unlawful FOIA denial. But whatever the motivation, the delay denial is unlawful under FOIA and also withholds from the FCC information important for its decision.

Sincerely,

Warren Havens  
President  
Skybridge Spectrum Foundation  
(Please note our new address:)  
2509 Stuart Street  
Berkeley CA 94705

From: Jimmy Stobaugh <jstobaugh@telesaurus.com>  
To: betty.watson@dot.gov  
Cc: Jimmy <jstobaugh@telesaurus.com>; "mgriffith@telesaurus.com" <mgriffith@telesaurus.com>; Warren Havens <warren.havens@sbcglobal.net>  
Sent: Fri, November 5, 2010 12:07:45 PM  
Subject: FRA File Nos. FOIA 10-212 and 10-226: Status of Processing and Providing Responsive Records to Skybridge's Two FOIA Requests

Ms. Watson, Department of Transportation:

I am sending this to check on the status of Skybridge Spectrum Foundation's two pending FOIA requests filed with the Federal Railroad Administration (FRA): FRA File No. FOIA 10-212 and FRA File No. FOIA 10-226.

Skybridge received a letter from you on May 18, 2010 re: processing of FOIA 10-212 and another letter on June 7, 2010 regarding processing of FOIA 10-226. Both letters said that FRA had a high number of FOIAs and would be dealing with them on a first-come, first-serve basis. Your letter said to contact you with any questions.

It has now been approximately 5 months since your letters were sent and we have yet to hear anything back from the FRA or DOT about the status of responding to these two FOIA requests. Could you please let us know when we may expect a response including responsive records? Also, has FRA gathered together any responsive records to date and, if so, might it provide those documents at this time while it searches for other ones?

Sincerely,

Jimmy Stobaugh  
On behalf of Skybridge Spectrum Foundation  
2649 Benvenue Ave.  
Berkeley, CA 94704

Cc: Warren Havens, President  
Mark Griffith, assistant